STATE OF MICHIGAN

COURT OF APPEALS

CHERRYLAND ELECTRIC COOPERATIVE, Petitioner-Appellee, v BLAIR TOWNSHIP, Respondent-Appellant.	UNPUBLISHED May 15, 2012 No. 296829 Michigan Tax Tribunal LC No. 00-296021
CHERRYLAND ELECTRIC COOPERATIVE, Petitioner-Appellee, v EAST BAY TOWNSHIP, Respondent-Appellant.	 No. 296830 Michigan Tax Tribunal LC No. 00-296028
CHERRYLAND ELECTRIC COOPERATIVE, Petitioner-Appellee, v GARFIELD TOWNSHIP, Respondent-Appellee.	 No. 296856 Michigan Tax Tribunal LC No. 00-296026

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

In these consolidated appeals, Blair Township, East Bay Township and Garfield Township ("the Townships") appeal the Michigan Tax Tribunal's ("MTT") judgment in favor of Cherryland Electric Cooperative ("Cherryland") providing it with a refund of personal property tax paid to the Townships. We affirm.

Cherryland sought recovery of its alleged overpayment of taxes pursuant to MCL 211.53a, which states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not paid under protest.

Paramount to the issue of whether recovery is warranted is a clear understanding of the difference between a mutual mistake of fact and a mistake of law. The Michigan Supreme Court found that when the Legislature inserted the term "mutual mistake of fact" into MCL 211.53a, the term was to be "construed and understood consistent with its peculiar meaning," as the term's common law meaning was not intended to be changed.[1] Thus, a "mutual mistake of fact" as used in MCL 211.53a is defined as "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction."[2]

In contrast, a mistake of law includes the "mistake about the validity of a tax" or the "imposition of an unlawful tax."[3] A mistake of law does not warrant relief under MCL 211.53a.[4]

The Michigan Supreme Court applied its definition of mutual mistake of fact in *Ford Motor Company v City of Woodhaven*. In that case, Ford prepared and filed personal property tax statements.[5] Unbeknownst to Ford, in preparing the tax statements, it "overstated the quantity of taxable property it owned" which resulted in "excessive tax bills."[6] Ford paid the amounts due and later filed the requisite petitions with the MTT requesting a refund of the overpaid taxes pursuant to MCL 211.53a.[7] The Court found that a mistake occurred as "the personal property statements erroneously overstated the amount of Ford's taxable property[.]"[8] The Court also found that the mistake of the parties was mutual because both Ford and the assessors believed that the personal property statements were accurate.[9] Moreover, the mistake

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[1] *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006).

[2] *Id.*

[3] *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 83-84; 780 NW2d 753 (2010).

[4] See *Eltel Assoc, LLC v City of Pontiac*, 278 Mich App 588, 591; 752 NW2d 492 (2008).

[5] *Ford Motor Co*, 475 Mich at 429.

[6] *Id.*

[7] *Id.* at 430.

[8] *Id.* at 443.

[9] *Id.*

went to the "very nature of the transaction - that all the personal property Ford claimed in its personal property statements was taxable."[10]

The MTT found in the instant case that the bulletin issued by the State Tax Commission ("STC") on January 11, 1984 ("1984 bulletin") to the assessing officers and county equalization directors directed the Rural Electric Cooperatives ("REA"), such as Cherryland, to prepare their personal property tax statements using "the same procedures" as the Investor Owned Utilities ("IOUs"). The 1984 bulletin also indicated that "[a] system economic factor will be based upon the cooperatives kilowatt hour sales per mile of line" and does not mention Contributions in Aid of Construction ("CIAC").[11] Following the issuance of the 1984 bulletin, the STC issued a REA personal property reporting form ("1984 form") which included CIAC when CIAC was not being reported by IOUs. In finding that Cherryland was entitled to a refund, the MTT reasoned that "[t]he mutual mistake of fact was the parties' shared erroneous belief that CIAC was required to be reported and included pursuant to the [STC's] personal property statements and directives."

This Court reviews the MTT's decision to determine "whether the MTT erred in applying the law or adopting a wrong legal principle."[12] This Court will "deem the Tax Tribunal's factual findings conclusive if they are supported by 'competent, material, and substantial evidence on the whole record.'"[13] We find that the MTT did not err in applying the law as the record supports that there was a mutual mistake of fact. Here, similar to the *Ford* case, both Cherryland and the Townships' assessors believed that the 1984 form was accurate. That belief, however, was erroneous as CIAC should not have been included in the personal property assessments for REAs based on the 1984 bulletin. The erroneous belief of the parties resulted in Cherryland's personal property being inaccurately assessed, thus affecting the substance of the transaction. Accordingly, the grant of refund to Cherryland was proper and reversal is not warranted.[14]

The Townships argue that the STC's requirement that the REAs report CIAC was a matter of law and any mistake in that regard was a mistake of law. This argument, however, must fail as this case does not involve the "collection of an unauthorized tax."[15] Rather, the tax here was authorized, but the form used to compute the tax contained an error.

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[10] *Id.*

[11] CIAC is not property, but is "a financial contribution to offset total construction costs of a project . . . CIAC is an 'upfront' payment from a third party to a utility that the utility thereafter spends, together with its own money, to construct [transmission and distribution] property." *Wayne Co v State Tax Comm (Wayne Co II)*, 261 Mich App 174, 232; 682 NW2d 100 (2004).

[12] *Ford Motor Co*, 475 Mich at 438.

[13] *Briggs Tax Serv, LLC*, 485 Mich at 75, citing *Mich Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

[14] *Ford Motor Co*, 475 Mich at 438.

[15] *Briggs Tax Serv, LLC*, 485 Mich at 83.

The Townships also assert that both the STC and the Michigan Electric Cooperative Association ("MECA") were aware that REAs were to report CIAC when reporting personal property for tax purposes. While the STC and MECA may have been aware that the personal property reporting form contained CIAC, any awareness does not change that Cherryland and the Townships' assessors shared and relied on the erroneous belief that the 1984 form was correct.[16] Thus, this argument also must fail.

Moreover, in regard to the Townships' contention that this Court's opinion in *Ontonagon*[17] is controlling, in addition to the fact that this Court's opinion in that case is "not precedentially binding,"[18] the MTT cases from which that appeal arose are distinguishable because the cases were dismissed for lack of jurisdiction. As such, the Townships' assertion lacks merit.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Patrick M. Meter

[16] *Ford Motor Co*, 475 Mich at 442.

[17] *Ontonagon Co Rural Electrification v Sherman Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 17, 2006 (Docket Nos. 265605 and 265606).

[18] MCR 7.215(C)(1).